



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WESTERN REGION SAN FRANCISCO

Kerry O'Brien
Regional Director

(415) 848-5189
kobrien@ftc.gov

90 Seventh Street
Suite 14-300
San Francisco, California 94103

July 3, 2024

Via Federal Express

Gary Lau
President
ZOTAC USA Inc.
1220 Highland Avenue, #1363
Duarte, CA 91010

Compliance Warning Re: Magnuson-Moss Warranty Act

Dear Mr. Lau:

The Federal Trade Commission (“FTC” or “Commission”), the nation’s consumer protection agency, enforces the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45, which prohibits unfair or deceptive acts or practices in or affecting commerce. The FTC Act requires that any representations be truthful and non-misleading. The FTC also enforces the Magnuson-Moss Warranty Act (“the Warranty Act”), 15 U.S.C. §§ 2301–2312. The Warranty Act is a law that governs consumer product warranties and, among other things, establishes disclosure standards for written warranties. The Warranty Act prohibits warrantors of consumer products costing more than five dollars from conditioning their written warranties on a consumer’s use of any article or service, such as repair service, which is identified by brand, trade, or corporate name, unless (1) the warranty states the article or service will be provided to the consumer for free, or (2) the warrantor has been granted a waiver by the Commission.¹ Similarly, warranty language that *implies* to a consumer acting reasonably under the circumstances that warranty coverage requires the consumer to purchase an article or service identified by brand, trade or corporate name is similarly deceptive and prohibited.² A violation of

¹ 15 U.S.C. § 2302(c). A warrantor may apply for a waiver by demonstrating to the Commission that the warranted product will function properly only if the article or service so identified is used in connection with the warranted product and that the waiver is in the public interest.

² 16 C.F.R. 700.10; 15 U.S.C. § 2310(c).

the Warranty Act is a violation of Section 5 of the FTC Act, and the FTC has previously brought actions against companies for this type of Section 5 violation.³

In addition, claims by a warrantor that create a false impression that a warranty would be void due to the use of unauthorized parts or service may, apart from the Warranty Act, constitute a deceptive practice under Section 5 of the FTC Act.⁴ Absent a Commission waiver pursuant to Section 2302(c) of the Warranty Act, a warrantor claiming or suggesting that a warranty is void simply because a consumer used unauthorized parts or service would have no basis for such a claim.

The FTC's Western Region San Francisco has reviewed written warranty materials related to products offered by ZOTAC USA Inc. ("ZOTAC") available on zotac.com. Staff has concerns about certain representations ZOTAC is making regarding its warranty coverage. In particular, staff is concerned about the repair restrictions inherent in the following statements in ZOTAC's written warranty:

Warranty claims will be void if the user: ... [t]ampers, defaces, or removes any stickers indicating void warranty if broken.

Staff similarly would be concerned about any additional representations made by ZOTAC that state or imply that its warranty coverage requires a consumer to purchase an article or service identified by ZOTAC or another brand, trade or corporate name. Furthermore, staff would be concerned if ZOTAC, in practice, denied warranty coverage based on the warranty provisions quoted above or any similar provision.

This letter places you on notice that violations of the Warranty and FTC Acts may result in legal action. FTC investigators have copied and preserved the online pages in question, and we plan to review your company's written warranty and promotional materials after 30 days. You should review the Warranty and FTC Acts and, if necessary, revise your practices to comply with the Acts' requirements. By sending this letter, we do not waive the FTC's right to take law enforcement action and seek appropriate injunctive and monetary remedies against ZOTAC based on past or future violations.

³ See, e.g., Decision and Order, *In re Harley-Davidson Motor Co. Grp., LLC*, FTC Docket No. C-4778 (Oct. 21, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/2123140-Harley-Davidson-combined-package-without-signatures.pdf; Decision and Order, *In re Weber-Stephen Prods. LLC*, FTC Docket No. C-4775 (Sept. 14, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/Weber-Stephen%20Decision%20and%20Order.pdf; Decision and Order, *In re MWE Invs., LLC*, FTC Docket No. C-4774 (Aug. 11, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/222%203012%20%20Westinghouse%20Decision%20and%20Order.pdf.

⁴ 15 U.S.C. § 45(a); 80 Fed. Reg. 42710, 42713 (July 20, 2015) (citing Letter from James C. Miller III, Chairman, Fed. Trade Comm'n, et al., to Rep. John D. Dingell (Oct. 14, 1983), reprinted in *Cliffdale Assocs., Inc.*, 103 F.T.C. 110, 174 (1984), https://www.ftc.gov/system/files/documents/public_statements/410531/831014_deceptionstmt.pdf).

Thank you for your attention to this matter. Please direct any inquiries concerning this letter to Abdiel Lewis at alewis4@ftc.gov and Alyssa Wu at awu1@ftc.gov.

Sincerely,

A handwritten signature in blue ink that reads "Kerry O'Brien". The signature is written in a cursive style with a large, stylized "K" and "O".

Kerry O'Brien
Regional Director
Western Region San Francisco